

Application No. 09/975,047

RXSD 1020-1

**REMARKS**

In the Official Action mailed 1 July 2005, the Examiner reviewed claims 1-24. The Examiner objected to claim 12. The Examiner rejected claims 1-3, 5-13 and 15-24 under 35 U.S.C. §102(e); and rejected claims 4 and 14 under 35 U.S.C. §103(a). The Examiner also provisionally rejected claims 1-3 and 4 for obviousness-type double patenting.

Claims 1 and 12 are amended. Claims 1-24 remain pending.

The Examiner's objection and rejections are respectfully traversed below.

**Objection to Claim 12**

The Examiner objected to claim 12, as a substantial duplicate of claim 1. Claim 1 is amended to correct a typographic error. Claim 12 differs from claim 1, as amended, by one word. Claim 1 includes the phrase, "input from the user that indicates if the user heard the stimulus." Claim 12 substitutes the word "that" for the word "if" in the just quoted phrase. Applicant acquiesces in the Examiner's interpretation that the phrases are substantially the same.

Claim 12 has been amended as set forth above, to add clarifying subject matter, and to adopt use of the term "if".

**Rejection of Claims 1-3, 5-13 and 15-24 under 35 U.S.C. §102(e)**

The Examiner rejected claims 1-3, 5-13 and 15-24 under 35 U.S.C. §102(e) as anticipated by Horn (U.S. Patent No. 6,379,314 B1). Applicant respectfully requests reconsideration.

Claim 1 includes the limitation reading:

"executing the computer program on the computer, the execution of the computer program generating an audio stream."

Horn does not teach this limitation. The Examiner refers to the abstract of Horn as meeting this limitation. The Abstract of Horn includes the statement, "Electronic data is sent to users (sic) which instructs the user's computer to generate a series of sounds..."

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This phrase in Horn is silent as to the generation of the audio stream used to generate the sounds. Horn uses the same terminology at column 6, lines 23-27. At column 7, lines 6-16, Horn teaches sending "sound probes" to the user, suggesting that the audio streams used to generate the stimulus in Horn are data files referred to as sound probes that are not generated by a computer program executed at the user computer, as required in claim 1, but rather sent to the user.

The present invention on the other hand is explicitly directed to systems that do not need to send audio streams to the user. Rather, the computer program is sent to the user, and audio streams are generated by executing the program at the user's computer. See, paragraph [0012] at page 4, lines 5-9. See also, paragraphs [0005] and [0006] in the Background of the Invention of the present application.

Claims 2-11 depend from claim 1 and are patentable for at least the same reasons.

Claim 12 distinguishes over Horn for the same reasons as claim 1. In addition, Applicant has amended claim 12 to emphasize that the stimulus is generated by supplying the audio stream to the speaker, and the user input is provided to the computer program on the users' computer. There is no similar teaching in Horn.

Claims 13-18 depend from claim 12 as amended, and are patentable for at least the same reasons.

Independent claim 19 distinguishes over Horn because Horn does not describe a program that generates an audio stream, as claimed, and communicates with a server.

Claims 20-25 depend from claim 19, and are patentable for the same reasons.

Accordingly, reconsideration of the rejection of claims 1-3, 5-13 and 15-24, as amended is respectfully requested.

Rejection of Claims 4 and 14 under 35 U.S.C. §103(a)

The Examiner rejected claims 4 and 14 as unpatentable over Horn in view of alleged "Admitted Prior Art." Applicant requests reconsideration.

Applicant has not admitted in the specification of the present application that email is used for downloading programs. Further, the Examiner did not refer to any specific text that constitutes such admission. Therefore, the Examiners' *prima facie* case is based on a mistake.

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Further, claim 4 depends from claim 1, and claim 14 depends from claim 12, as amended. Thus claims 4 and 14 are allowable for at least the same reasons as claims 1 and 12 respectively.

Accordingly, reconsideration of the rejection of claims 4 and 14, as amended, is respectfully requested.

Provisional Rejection of Claims 1-3 and 4 for Obviousness-type Double Patenting

The Examiner provisionally rejected claims 1-3 and 4 for obviousness-type double patenting over Application No. 09/975,881, in view of Horn. Applicant requests reconsideration, because Application No. 09/975,881 has been abandoned.

**CONCLUSION**

It is respectfully submitted that this application is now in condition for allowance, and such action is requested.

The Commissioner is hereby authorized to charge any fee determined to be due in connection with this communication, or credit any overpayment, to our Deposit Account No. 50-0869 (RXSD 1020-1).

Respectfully submitted,

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